

**Initial Statement of Reasons for**  
**Proposed Amendments to California Code of Regulations,**  
**Title 18, Section 308.6, *Application for Equalization by Member,***  
***Alternate Member, or Hearing Officer***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY,  
AND ANTICIPATED BENEFIT

Current Law

The State Board of Equalization (Board) has a number of duties in regarding to the administration of California's property tax. Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the Board has adopted California Code of Regulations, title 18, sections (Property Tax Rules) 301 through 326 relative to the local equalization process, which is the process by which a county property tax assessment may be appealed to a local board of equalization or assessment appeals board by filing an application.

The Board adopted Property Tax Rule 308.6, *Application for Equalization by Member, Alternate Member, or Hearing Officer*, pursuant to Government Code section 15606, in order to implement, interpret, and make specific the Revenue and Taxation Code's conflict of interest provisions applicable to county property tax assessment appeals.

Prior to 2009, Revenue and Taxation Code (RTC) section 1612.7 required an application filed by an employee of the office of the clerk of an assessment appeals board in the county in which the individual is employed, on the employee's own behalf or with the intention to represent the employee's spouse, parent, or child in an assessment appeal, to be heard in accordance with RTC section 1622.6.

Prior to 2009, RTC section 1622.6 required an application filed by a member or alternate member of an assessment appeals board in the county in which the member serves, on the member's own behalf or with the intention to represent the member's spouse, parent, or child, to be heard by a special alternate assessment appeals board appointed by the superior court.

In addition, prior to it repeal (discussed below), RTC section 1636.5 required an application filed by an assessment hearing officer in the county in which the officer serves, on the officer's own behalf or with the intention to represent the officer's spouse, parent, or child, to be heard in accordance with RTC section 1622.6.

Assembly Bill No. 824 (Stats. 2009, ch. 477) (AB 824) repealed and reenacted RTC section 1612.7 and amended RTC section 1622.6 in order to:

- Add to and revise the statutory list of persons whose applications must be heard in accordance with the procedures in RTC section 1622.6 regarding hearings by special alternate assessment appeals boards appointed by the superior court;
- Grant clerks discretion to refer an application to an actively serving special alternate assessment appeals board in another California county in lieu of requesting that the superior court appoint a new special alternate assessment appeals board to hear the application in the clerk's county; and
- Specify the jurisdiction of special alternate assessment appeals boards to hear applications referred from other counties.

The August 19, 2009, Senate Floor Analysis of AB 824 explained that the California Association of Clerks and Election Officials (CACEO) sponsored the bill, and that the new procedures for clerks to refer an application to an actively serving special alternate assessment appeals board in another county are intended to “be voluntary for both [the referring and receiving] counties.”

As a result of AB 824, RTC section 1612.7 currently requires applications filed by the following persons, in the counties in which they serve or are employed, on their own behalf or with the intention to represent their spouse, parent, or child, to be heard in accordance with RTC section 1622.6:

- A current member of an assessment appeals board or a current member of a special alternate assessment appeals board;
- A current assessment hearing officer;
- A current employee of the office of the clerk of the county board of equalization or assessment appeals board; and
- A current employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board.

As a result of AB 824, RTC section 1622.6 currently requires that such applications must be heard by a special alternate assessment appeals board either appointed by the superior court or consisting of three qualified special alternate assessment appeals board members in good standing in another California county.

Senate Bill No. 1494 (Stats. 2010, ch. 654) (SB 1494) subsequently repealed RTC section 1636.5 because similar provisions pertaining to hearing officers were added to RTC section 1612.7 by AB 824.

Property Tax Rule 308.6 reflects the conflict of interest provisions applicable to county property tax assessment appeals prior to the statutory changes made by AB 824 and SB 1494.

Furthermore, RTC section 1624.1 currently provides that “No person shall be qualified to be a member of an assessment appeals board who has, within the three years immediately preceding his or her appointment to that board, been an employee of an assessor’s office.” RTC section 1624.2 currently provides that “No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.” RTC section 1625 provides that “Any member of an assessment appeals board may be removed for cause by the board of supervisors.” And, Property Tax Rule 308.6, subdivision (d), currently provides that “Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.”

Specific Purpose, Problem Intended to be Addressed, Necessity, and Benefits of the Proposed Amendments

Board staff in the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to solve the problem of how to amend Property Tax Rule 308.6 to reflect the changes to RTC sections 1612.7 and 1622.6 made by AB 824, delete the reference in the rule to section 1636.5, which was repealed by SB 1494, and incorporate the provision regarding removal in the second sentence of RTC section 1624.2. Interested parties were provided with staff’s proposed draft language for the amendments to the rule on August 28, 2012 (Letter To Assessors 2012/036), and invited to participate in the rulemaking effort.

The Board received three written comments from interested parties in response to the draft amendments. The counties generally approved of the draft language. However, the draft amendments provided in Letter To Assessors 2012/036 suggested that an application “may only be referred to a county if there is an agreement for the referral between the two counties.” The Tulare County Counsel’s Office raised concerns that staff’s suggested language may be interpreted as requiring a formal contract signed by each county’s board of supervisors. Therefore, the Tulare County Counsel’s Office suggested replacing staff’s suggested language with the following: “Applications may only be referred to a county if that county’s assessment appeals board has consented to accept the referral.”

Staff agreed with the comment and incorporated the Tulare County Counsel’s Office’s proposed language into the second draft of staff’s proposed amendments to Property Tax Rule 308.6, which was provided to interested parties in Formal Issue Paper 13-001. In addition, staff determined that a violation of RTC section 1624.1 would provide cause for the removal of a special assessment appeals board member under RTC section 1625. Therefore, the second draft of staff’s proposed amendments to Property Tax Rule 308.6 provided that both RTC sections 1624.1 and 1624.2 are applicable to the “removal” of a special assessment appeals board member, rather than incorporating the provision regarding removal in the second sentence of RTC section 1624.2.

CACEO raised a concern regarding the revised language providing that “Applications may only be referred to a county if that county’s assessment appeals board has consented to accept the referral” in a letter dated March 6, 2013, from John McKibben, Chairman of CACEO’s BOE Rules Work Group. Mr. McKibben’s letter explained that CACEO’s intent in sponsoring AB 824 was to establish a procedure for referring applications under which “the only action or ‘agreement’ . . . was the ‘agreement’ between the two clerks involved.” His letter also recommended that staff’s proposed amendments be revised to read as follows: “Applications may only be referred to a county if that county’s clerk of the assessment appeals board has consented to accept the referral.”

Staff subsequently accepted CACEO’s recommended revision and a third draft of the proposed amendments to the rule, which incorporated CACEO’s recommended revision, was sent to interested parties on September 29, 2014 (Letter To Assessors 2014/047). No interested parties raised any further concerns regarding the third draft. Therefore, Board staff prepared Formal Issue Paper 14-010, which recommended that the Board propose the adoption of staff’s third draft of the amendments to Property Tax Rule 308.6, and submitted it to the Board for consideration at its January 21, 2015, Property Tax Committee meeting.

During its January 21, 2015, Property Tax Committee meeting, the Board determined that staff’s recommended amendments were reasonably necessary for the specific purpose of addressing the problem for which they are proposed, namely, making Property Tax Rule 308.6 consistent with the provisions of RTC sections 1612.7 and 1622.6, as modified by AB 824, deleting the reference to RTC section 1636.5, which was repealed by SB 1494, and clarifying that RTC sections 1624.1 and 1624.2 are applicable to the removal of a special assessment appeals board member. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The Board anticipates that the proposed amendments to Property Tax Rule 308.6 will promote fairness, increase openness and transparency in government, and benefit members of assessment appeals boards and special alternate assessment appeals boards, assessment hearing officers, employees of the offices of the clerks of the boards of equalization and assessment appeals boards, the clerks themselves, employees of the county counsels, and the general public by providing more clarity as to the application of RTC sections 1612.7, 1622.6, 1624.1, and 1624.2.

The proposed amendments to Property Tax Rule 308.6 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 308.6 or the proposed amendments to Property Tax Rule 308.6.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 14-010, the attachment to the issue paper, and the comments made during the Board’s discussion of the issue paper during its January

21, 2015, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 308.6 described above.

## ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 308.6 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 308.6 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

## INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments make Property Tax Rule 308.6 consistent with the repeal and reenactment of RTC 1612.7 and amendments made to RTC section 1622.6 by AB 824 and the repeal of RTC section 1636.5 by SB 1494. The proposed amendments to Property Tax Rule 308.6 clarify the conflict of interest provisions applicable to county property tax assessment appeals; specifically, with regards to appeals applications filed by: a current member of an assessment appeals board or alternate member; a current assessment hearing officer; a current employee of the office of the clerk of the board of equalization or assessment appeals board; and a current employee of the county counsel who advises the assessment appeals board or represents the county assessor before the assessment appeals board. The proposed amendments clarify the provisions for a clerk of the board to refer an assessment appeal application to a special alternate assessment appeals board in another county, and the clarification is consistent with both the Legislature's intent in enacting the provision and CACEO's intent in sponsoring the Legislature's enactment of the provision. In addition, the proposed amendments clarify that RTC sections 1624.1 and 1624.2 are applicable to the removal of a special assessment appeals board member.

As a result, the proposed amendments mainly clarify existing law and procedures regarding the use of special alternate assessment appeals boards in conflict of interest situations. The proposed amendments will not significantly change how appeals

applications are heard by special alternate assessment appeals boards or the clerks' discretion to refer appeals applications in the absence of the proposed amendments. And, the proposed amendments do not affect jobs or business in the state in any measurable way that is separate from whatever affect the repeal and reenactment of RTC 1612.7 and the amendments made to RTC section 1622.6 by AB 824 may have had on jobs or business. Therefore, the Board has determined that the proposed amendments to Property Tax Rule 308.6 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Furthermore, based on these facts and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, Property Tax Rule 308.6 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will not affect the benefit of Property Tax Rule 308.6 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 308.6 will not have a significant adverse economic impact on business.

The proposed amendments may affect small businesses.